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May 13, 2008

## **AGENDA ITEM 10**

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE**

- I. SUBJECT:** Update on CalSTRS' Adoption of Campaign Contribution Regulations
- II. PROGRAM:** Administration
- III. RECOMMENDATION:** Information Only
- IV. ANALYSIS:**

**A. Executive Summary**

California public officials and employees are governed by a myriad of statutes, regulations, and policies that address conflicts of interest and restrict gifts, campaign contributions and certain communications. These rules are intended to limit improper influence and to improve transparency in governmental decision-making.

In October and December 2006, staff informed the Committee of the status of the efforts of the California State Teachers' Retirement System (CalSTRS) to adopt policies and regulations to supplement the ethical rules imposed by state law. In February 2007, staff provided a further update on CalSTRS' actions, provided recommendations for CalPERS initiating similar policy and rulemaking, and compared CalSTRS' policies to state law, CalPERS' regulations and policy<sup>1</sup>, and former CalPERS policies that were invalidated by the litigation brought by then State Controller Kathleen Connell. Attachment A contains the February 2007 agenda item.

All of the CalSTRS policies had been adopted as of February 2007, except for the campaign contribution limits. Those restrictions and related rules were

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<sup>1</sup> The February 2007 agenda item incorrectly noted that CalPERS does not have a nepotism policy. In fact, CalPERS does have a nepotism policy though there are differences between the two policies.

adopted by CalSTRS as regulations pursuant to the Administrative Procedures Act and became effective on November 28, 2007. The final CalSTRS campaign contribution regulations can be found at Attachment B. In summary, the CalSTRS regulations impose materially more stringent campaign contribution limits than those limits imposed by state law.

	<i>Elected CalPERS Board Members</i>	<i>Treasurer &amp; Controller</i>	<i>Governor</i>
<i>CalSTRS per person limits</i>	\$1,000	\$1,000	\$1,000
<i>State law per person limits</i>	\$3,600	\$6,000	\$24,100
<i>CalPERS per person limits</i>	None	None	None
<i>CalSTRS per firm limits</i>	\$5,000	\$5,000	\$5,000
<i>State law per firm limits</i>	None	None	None
<i>CalPERS per firm limit</i>	None	None	None

CalSTRS' campaign contributions limits, state law contribution limits and CalPERS' contribution limits are discussed in more detail below.

## **B. CalSTRS' Campaign Contribution Limits**

### **1. Background**

CalSTRS campaign contribution regulations became effective on November 28, 2007. The final regulations were the product of a process started by CalSTRS in early 2006. There were several public meetings held to discuss the campaign contribution proposals and CalSTRS received public input from a variety of interested parties. CalSTRS also made a concerted effort to obtain comments from its business partners, including many of its investments consultants, money managers, and general partners of the funds in which it invests. CalSTRS' process and rationale in deciding to adopt the campaign contribution limits is summarized by CalSTRS as follows:

The Board heard testimony from pension, fiduciary and government ethics experts. The Board heard what other states were doing to address the pay-to-play issue, an issue that had reached a high level of national media focus and become a topic of constant discussion and

debate in the public pension world. The Board is compelled by statute and the state constitution to act with care, skill, diligence and prudence. The Board, after extensive fact finding, concluded the most prudent course for addressing the threat of tainting investment transactions with even the hint of pay-to-play or quid pro quo decision making associated with campaign contributions was to place reasonable limits upon such contributions to members of the Board, candidates for the Board, including ex officio members, and upon the appointing authority for six out the twelve members of the Board. *CalSTRS September 6, 2007 Agenda Item.*

CalSTRS' proposed campaign contribution regulations were opposed most prominently by the California Chamber of Commerce. The Chamber argued that the proposal (1) would have an adverse economic impact; (2) is without statutory authority; (3) is unclear; (4) is unnecessary; and (5) violates the First Amendment. CalSTRS' September 2007 agenda item (without attachments) addresses the Chamber's arguments and can be found at Attachment C.

To date there has not been a legal challenge to CalSTRS' regulations.

## 2. Summary of the CalSTRS Campaign Contribution Limits

- The regulations prohibit a party who engages or seeks to engage in an investment relationship with CalSTRS from making campaign contributions in excess of \$1,000, individually, or \$5,000 in the aggregate from the same business party. (Whose contributions count towards the \$5,000 aggregate limit is narrowly defined to "key persons" and those with a direct financial interest in the CalSTRS relationship.)
- The prohibition does not apply to individuals and parties outside of the investment arena
- The prohibition does not apply to investment relationships that result in less than \$100,000 annually from CalSTRS.
- The limits apply to campaign contributions to CalSTRS employees, the Governor, Board members (including the *ex-officio* statewide elected Board members) as well as candidates for Governor, and the CalSTRS Board including the *ex-officio* statewide elected Board members, *i.e.*, the Controller, Treasurer, and Superintendent of Public Instruction.
- The prohibition begins on the date CalSTRS first announces a procurement or search process or on the date a party approaches CalSTRS with an investment proposal and ends when a contract is terminated or when CalSTRS communicates its decision not to pursue the investment relationship.
- Covered Board members and employees must recuse themselves from covered investment decisions involving any party from whom he or she

received a contribution in excess of the limits described above. (The member appointed by the Governor and the Department of Finance shall sit in place of the Governor for purposes of this recusal obligation.)

- A party that violates the policy shall be disqualified from engaging in future or additional relationships with CalSTRS for two years.
- Certain inadvertent violations that were not knowing or intentional may be exempt from the two-year disqualification.
- The General Counsel shall cause an independent investigation to be performed for any reported violation.
- CalSTRS staff shall maintain a current list of parties engaged in investment relationships and the Board members' recusal obligations does not apply if the investment relationship has not been published on the list.

**C. State Law Limiting Campaign Contributions and Gifts**

The Political Reform Act imposes campaign contribution limits on CalPERS' elected Board members, candidates for the elected CalPERS Board seats, as well as the Treasurer, Controller, and Governor, and candidates for these statewide offices. The campaign contribution limits are \$3,600 for CalPERS elected Board members (with a run-off election allowing for an additional \$3,600), \$6,000 for the Treasurer and Controller and \$24,100 for the Governor. The contribution limits are "per person" limits. "Person" is defined as an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee and any other organization or group of persons acting in concert.

**D. Current CalPERS Policy**

CalPERS does not have a policy limiting campaign contributions to any CalPERS officials beyond the requirements of State law described above. There is an Incompatible Activities Statement that prohibit Board members and staff from accepting:

anything of value from anyone who is doing or is seeking to do business of any kind with the Public Employees' Retirement System or whose activities are regulated or controlled by PERS under circumstances from which it reasonably could be substantiated that the gift was intended to influence the [officer] in his or her official duties or was intended as a reward for any official actions...

**V. STRATEGIC PLAN:**

This supports Goal II of the Strategic Plan which calls for CalPERS, as an organization to "foster a work environment that values quality, respect, diversity, integrity, openness, communication, and accountability.

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